

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREL LEE SMITH,

Plaintiff,

No. CIV S-04-0702 MCE PAN P

vs.

CHARLES KING, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On June 10, 2005, the court issued a scheduling order setting the dispositive motion deadline for November 25, 2005. On August 4, 2005, a scheduling order issued in another action, setting a dispositive motion cutoff of January 27, 2006, was erroneously docketed in this case.¹ A clerk's notice of docket correction was filed the same day.

On February 14, 2006, defendant King requested an extension of time to file a dispositive motion. In his request, defendant states he calendared the dispositive motion deadline for January 27, 2006, based on the August 4, 2005 order, but, due to the press of business, he was unable to file his motion by that date. Defendant states he believes this case may be resolved by

¹ The erroneous filing contained the caption for the correct case: Territo v. Sandham, CIV S-04-1460 MCE PAN P.

1 way of summary judgment motion.

2 Although defendant has not met the requirements of Fed. R. Civ. P. 6, the court
3 concurs with defendant's assessment that this matter may be resolved or substantially narrowed
4 by motion for summary judgment. Accordingly, the court will direct the parties to file within
5 forty-five days from the date of this order cross motions for summary judgment. In view of this
6 order, plaintiff's previously filed motion for summary judgment will be denied without prejudice.

7 Good cause appearing, IT IS HEREBY ORDERED that:

8 1. The parties are directed to file, within forty-five days, cross motions for
9 summary judgment;

10 2. Plaintiff's March 21, 2005 motion for summary judgment is denied without
11 prejudice; and

12 3. The Clerk of the Court is directed to terminate defendant's February 14, 2006
13 application (docket no. 77).

14 DATED: February 21, 2006.

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17 UNITED STATES MAGISTRATE JUDGE

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